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EXPRESS MAIL LABEL NO. EV 733 587 720 US



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before the Board of Patent Appeals and Interferences

Applicant: Mark Duchow

Art Unit: 3622

Serial No. 09/682,876

Examiner: J. Myhre

Filed: October 26, 2001

For: SYSTEM AND METHOD FOR PROVIDING ELECTRONIC  
VOUCHERS

Docket No: 670715.90029

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TRANSMITTAL OF BRIEF ON APPEAL

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Mail Stop Appeal Brief - Patent  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

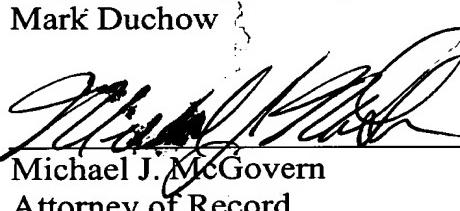
Sir:

Applicant hereby submits its brief in the appeal of the final rejection of the subject patent application.

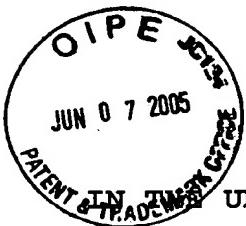
The \$250.00 fee for filing a brief by a small entity and any other fees due should be charged to Deposit Account No. 17-0055.

Respectfully submitted,  
Mark Duchow

By:

  
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PATENT

Dkt No. 670715.90029

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPELLANT'S BRIEF ON APPEAL

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Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellant, Mark Duchow, having filed a timely Notice of Appeal in the above identified patent application, hereby submits this brief.

**I. REAL PARTY IN INTEREST**

The real party in interest is Mr. Mark Duchow. The application is assigned to MRD Holdings, LLC, however, Mr. Duchow is the principal party in interest in this company.

**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

**III. STATUS OF CLAIMS**

Claims 76-93 are pending in the subject patent application and stand finally rejected. Claims 1-75 have been cancelled. This appeal is taken with respect to claims 76-93, which are set forth in Appendix A hereto.

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#### **IV. STATUS OF AMENDMENTS**

All amendments have been entered.

#### **V. SUMMARY OF THE CLAIMED SUBJECT MATTER**

One embodiment of the present invention is illustrated in Fig. 2. The invention that is common to all of the claims relates to distributing incentive vouchers over the Internet to cause customers to come "in the door" at participating dealers, referred to as "resellers" in the application.

##### **A. RELATION OF INDEPENDENT CLAIM 76 TO THE DRAWINGS AND DESCRIPTION.**

The method of the invention is claimed in the independent claim 76 from the perspective of an Internet website 120 operating under control of a structured computer program 130 having access to a plurality of databases 150, 160, 170 and 180. (Fig. 1) (para. 0024).

In Figs. 2 and 3, the blocks are labeled as "steps." However, these are not claim steps within the meaning of 35 U.S.C. 112, sixth paragraph. The claims recite actions. In any event, whether the limitations of the claims are characterized as actions or steps, the limitations of the claims will be related to corresponding portions of the drawings and specifications which support those parts of the claims.

The detailed elements of claim 76 are illustrated in Fig. 2 and described in corresponding paragraphs 0001-0016 and 0029-0051. A variation on the delivery of the voucher is described in relation to Fig. 3 (Note: paragraph numbers cited herein are from the published version of the application, Pub. No. US2002/0038237; claim line nos. are based on claims in Appendix A.)

Claim 76 begins by reciting that at least one screen display is displayed to the prospective customer through the Internet to allow the prospective customer to select a producer (Claim 76, lines 8-10 supported by Step 2; paras. 0032-0033).

The selection of a producer is received at the website from the prospective customer (Claim 76, lines 11-12 supported by Step 3; paras. 0034-0035). Next, the website provides at least one screen display to the prospective customer through the Internet which requests the prospective customer to select a product of said producer (Claim 76, lines 13-15 supported by Step 4; paras. 0036-0037). The selection of the product is then received at the website (Claim 76, lines 16-18 supported by Step 5; paras. 0038-0039). After receiving the selection of the product from said prospective customer and before displaying any amount of any purchase incentive to the prospective customer, a screen display is provided to the prospective customer which requests the prospective customer to enter personal contact information and a postal address code (Claim 76, lines 19-24 supported by Step 6; paras. 0040-0041 and Step 10, paras. 0048-0049).

The term "personal contact information" is used, as being more descriptive than "buyer information," meaning a name and address, or an e-mail address as disclosed in paras. 0041 and 0043 of the specification.

Next, the website receives the personal contact information and postal address code from the prospective customer through the Internet and the selection of the product. (Claim 76, lines 25-28 supported by Step 7 and paras. 0042-0043.)

After these actions, the website selects only one reseller from a plurality of available resellers based on the selection of the product and based on the postal address code entered by the prospective customer. (Claim 76, lines 29-35 supported by Step 8; paras. 0044-0045; para. 0009 last sentence, para. 0010 first sentence.)

The selection is made based on the zip code of the customer being within, or closest to, a pre-defined marketing territory of the reseller. (Claim 76, lines 32-36 supported by Step 8; para. 0045; para. 0006; para. 0010 and para. 0012, first sentence.)

The Background of the Invention defines marketing territories which are portions of states such as Illinois and

Wisconsin (para. 0006). Judicial notice is taken that these are multi-county areas having many zip codes in each such marketing territory.

The website then generates a voucher having a time limit for redemption and having a producer's purchase incentive on the purchase of the only one selected product at only one selected reseller (Claim 76, lines 37-40 supported by Step 9; paras. 0046-0047 and paras 0010, 0012 and 0051 as to "only one product at only one reseller.")

The voucher is then communicated to the customer, (Claim 76, lines 40-42 supported by Step 10; paras. 0048-0049) for printout and taking to a the reseller as described in Step 11 and para. 0051. In a variation described relative to Fig. 3, the voucher can be communicated to the reseller to be picked up by the customer when the customer visits the reseller (Fig 3, Steps 11 and 12; paras. 0073-076).

#### B. RELATION OF INDEPENDENT CLAIM 85 TO THE DRAWINGS AND DESCRIPTION.

Claim 85 is patterned after claim 76, except that it does not claim elements corresponding to Steps 2 and 3 in Fig. 2. This is an alternative embodiment of the invention in which Steps 2 and 3 of Fig. 2 are skipped, as described in paragraph 0033. last two sentences.

The detailed elements of claim 85 are illustrated in Fig. 2 and described in corresponding paragraphs 0001-0016 and 0029-0051 of the specification, and by limited material in relation to Fig. 3 (Note: paragraph numbers cited herein are from the published version of the application, Pub. No. US2002/0038237; claim line nos. are based on claims in Appendix A.)

The website provides at least one screen display to the prospective customer through the Internet to allow the prospective customer to select a product of a producer (Claim 85, lines 8-10 supported by Step 4; paras. 0036-0037). The selection of the product is then received at the website (Claim 85, lines 11-13 supported by Step 5; paras. 0038-0039). After receiving the selection of the "only one" product from said prospective customer and before displaying any amount of any

purchase incentive to the prospective customer, (claim 85, lines 14-16 supported by Fig. 2: Step 5 vs. Step 9) a screen display is provided to the prospective customer which requests the prospective customer to enter personal contact information and a postal address code (Claim 85, lines 17-19 supported by Step 6; paras. 0013, 0014, 0040-0041).

Next, the website receives the personal contact information and postal address code from the prospective customer through the Internet and the selection of the product (Claim 85, lines 20-23 supported by Step 7 and paras. 0042-0043).

After these actions, the website selects only one reseller from a plurality of available resellers based on the selection of the product and based on the postal address code entered by the prospective customer (Claim 85, lines 24-31 supported by Step 8; para. 0045; para. 0009 last sentence, para. 0010 first sentence and original claim 32).

The selection is made based on the zip code of the customer being within, or closest to, a pre-defined marketing territory of the reseller (Claim 85, lines 27-31 supported by para. 0045; para. 0006; para. 0010 and para. 0012, first sentence, and original claim 20).

The Background of the Invention defines marketing territories which are portions of states such as Illinois and Wisconsin (para. 0006). Judicial notice is taken that these are multi-county areas having many zip codes in each such marketing territory.

The website then generates a voucher having a time limit for redemption and having a producer's purchase incentive on the purchase of the only one selected product at only one selected reseller (Claim 85 lines 32-35, supported by Step 9; paras. 0046-0047, paras. 0010, 0012 and 0051, second sentence as to "only one product at only one reseller.")

The voucher is then communicated to the customer, printed out and taken to the reseller (Claim 85 lines 36-38 supported by Step 10; paras. 0048-0049). In a variation described relative to Fig. 3, the voucher can be communicated to the reseller to be picked up by the customer when the customer

visits the reseller (Claim 85 lines 36-38 supported by Fig 3, Steps 11 and 12; paras. 0073-0076).

C. RELATION OF DEPENDENT CLAIMS 77-82 AND 85-91 TO THE DRAWINGS AND DESCRIPTION.

The invention is further distinguished from the prior art in claims 77 and 86 by reciting that "the prospective customer's control over selection of the reseller is limited to the customer entering the selection of the only one product and entering the postal address code." (Fig. 2, Step 8, specification, paras. 0044-0045) (This means that the computer performs the selection in a manner transparent to the user.)

The invention is further distinguished from the prior art in claims 78 and 87 by reciting that "the reseller (not to be confused with the producer) is selected by the website in a sequence in which a purchase price of the product is not displayed to the prospective customer." Support for this limitation is found in paragraph 0009 of the specification.

The invention is further distinguished from the prior art in claims 79 and 88 by reciting "the selection of the one product, the entry of personal contact information and communication of the voucher occurs in only one access to the website." Support for this is found in Fig. 2 and paras. 0029 to 0051.

The invention is further distinguished from the prior art in claims 80 and 89 by reciting that "the voucher is communicated for only one product for each access of the website." Support for this is provided by Fig. 2 and paragraphs 0029-0051.

In claims 81 and 90, the pre-defined marketing territory is "an exclusive marketing territory assigned to the reseller by the producer of the selected product." Support for this is found in paragraphs 0006-0012 of the specification and amended paragraph 0045.

The invention is further distinguished from the prior art in claims 82 and 91 by reciting that "the selection of the reseller does not utilize pre-stored demographic data or direct customer selection through a screen display." Support for this is provided by Fig. 2 and paragraphs 0029-0051 of the specification.

Claims 83, 84 and 92 and 93 will not be argued as adding subject matter which further distinguishes from the art in and of themselves.

## VI. GROUNDS OF REJECTION

### A. THE PRIOR ART REJECTION UNDER 35 U.S.C. 103

Claims 76-93 were rejected under 35 U.S.C. 103 as being obvious over Stewart et al., U.S. Pat. No. 6,259,405 in view of Scroggie et al., U.S. Pat. No. 6,185,541. (Final action, para. 6.)

### B. THE FIRST NEW MATTER REJECTION

Claims 76-93 were rejected under 35 U.S.C. 132 as being based on new matter added to the specification, where the definition of products was limited to "goods and not services unless otherwise specified." (Final action, para. 2.)

### C. THE SECOND NEW MATTER REJECTION

Claims 76-93 were also rejected under 35 U.S.C. 132 as being based on new matter added to the specification in para. 0045 to read that "The structured computer program 130 selects the reseller that sells the product in memory 140 selected by the buyer 100 and that has the territory that includes, or is located closest to, the buyer 100 based on the zip code in memory 140 entered by the buyer." (Final Action, para. 7a).

## VII. ARGUMENT

A. THE CLAIMED SUBJECT MATTER IS NOT OBVIOUS OVER STEWART ET AL., U.S. PAT. NO. 6,259,405 IN VIEW OF SCROGGIE ET AL., U.S. PAT. NO. 6,185,541.

1. OBVIOUSNESS CONSIDERATIONS UNDER 35 U.S.C. 103 AND *GRAHAM v. JOHN DEERE*.

MPEP 2141 (Aug. 2004) states that Office policy is to follow *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), in the consideration and determination of obviousness under 35 U.S.C. 103. ...[T]he four factual inquires enunciated therein as a background for determining obviousness are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

This section goes on to state that when applying 35 U.S.C. 103 the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
  - (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
  - (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
  - (D) Reasonable expectation of success is the standard with which obviousness is determined.
- (Emphasis supplied.)

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218

USPQ 698 (Fed. Cir. 1983). MPEP 2141.02 (emphasis in original.)

MPEP 2143.01 provides that “[t]here are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a *prima facie* case of obvious was held improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).”

MPEP 2143.01 provides that: “In determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination, or other modification.” *In re Linter*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).”

MPEP 2143.01 provides that: “Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on

objective evidence and making specific factual findings with respect to the motivation to combine references); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” (Emphasis supplied.)

MPEP 2143.03 provides that all claim limitations must be taught or suggested. “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).”

The above points of law are cited as relevant to this appeal, because it will be shown that the Office Actions: 1) have not properly determined the differences from the prior art, 2) have not considered all claim limitations, 3) have not considered the claims as a whole, and 4) have not considered the embodiments in the references as a whole. The Office actions combine functionally dissimilar steps to arrive at a result that is not the claimed invention. Needless to say, the motivation factor to combine references is not properly framed under the obviousness inquiry in the Office actions.

2. CLAIMS 76, 83 AND 84, 85, 92 AND 93 ARE NOT OBVIOUS IN VIEW OF STEWART AND SCROGGIE.

For this ground of rejection, claims 83, 84, 85, 92 and 93 are argued as part of a group as being patentable for the same reasons as claim 76.

- a. THE OFFICE ACTION DOES NOT COMPARE THE REFERENCES TO THE CLAIMS ACCORDING TO THE DEERE PRINCIPLES AND DOES NOT READ THE CLAIMS OR THE REFERENCES AS A WHOLE - CONSEQUENTLY, THE DIFFERENCES BETWEEN THE CLAIMED INVENTION AND THE PRIOR ART ARE NOT PROPERLY ASCERTAINED.

The Examiner's reading of claim 76 on Stewart in the final action is as follows with Applicant's notes in brackets:

a. providing screen displays to allow the customer to select a desired producer (airline) (col 24, lines 29-33);

[Applicant's note: this is taken from an airline reservation example in Fig. 10A in which the user has previously submitted preferred airline (seller), seat type (product) and amenities in a database, Stewart, col. 24, lines 19-21.]

b. providing screen displays to allow the customer to enter product selection information (reservation information), personal ID data, and a postal code (col 20, lines 48-54 and 61-67);

[Applicant's note: the col. 20 example is taken from a rental car example in Fig. 8A in which the user has pre-registered a preferred auto provider (seller), car type (product) and insurance (product) before signing on - the user does not enter user location but enters the location for picking up the auto (col. 20, lines 47-54). The PC ID is a 32-bit machine and security code, not a personal ID in itself. Stewart, col. 6, lines 49-63; col. 12, lines 38-39. The customer would not input current location, but would enter a pickup location for the auto.]

c. receiving the above data through the Internet (col. 9, lines 35)

[Applicant's note: it logically follows that the data, as characterized above, is not requested and received in the claimed sequence.]

d. generating a voucher (offer) redeemable only at a reseller selected by the system (col. 27, lines 26-37)

[Applicant's note: this is not the same embodiment as the col. 20, col. 24 or col. 9 embodiments but a targeted advertising example in which the user does not select the product - the seller selects the product to send to the user in an unsolicited fashion, Stewart, col. 27, lines 18-20.]

e. communicating the voucher data to the prospective customer and the selected reseller (col. 25, lines 18-32); and

[Applicant's note: this is a taxi example in Fig. 10B in which no coupon or incentive is offered in the cited passages.]

f. selecting the one reseller based on the product selected and the postal address code (address) of the prospective customer (col. 11, lines 21-31 and col. 22, lines 22-31)

[Applicant's note: the auto rental reseller is directly selected by the customer in lines 22-31 and not derived from the location; the location only determines an estimated time of arrival in this example.]

The Examiner's reading of claim 85 is different than claim 76 in step e, which the Examiner finds in Stewart as follows:

"generating a time limited voucher (offer) (e.g. "For the next 15 minutes, all watches are 25% off at ABC Watch Company, which is located in the A concourse, between gates 14 and 16"

[Applicant's note: Applicant understands that this is cited only for the time limit aspect of vouchers. The example is inapposite to the present invention because the seller selects itself and sends an offer in unsolicited fashion to the customer.]

The Examiner's a. to f. steps do not accurately describe what is occurring in Stewart or Scroggie for reasons stated in brackets above.

First, the Examiner's step b. and c. assume that Stewart requests the prospective customer to input the prospective customer's location. This is in incorrect--it is done automatically by the equipment as an access point (AP) or GPS.

As to the customer's identity, a PC ID is described this way in Stewart at col. 6, lines 48-64 and col. 12, lines 38-39. This is in the nature of a security code that can be used to cross-reference pre-stored demographic information. This is basically a machine ID rather than a personal ID.

Although Stewart, col. 12, lines 32-34, mentions the use of a user name and password, this user name and password are well known in the art of the Internet as a log-on sequence,

where the log-on is cross-reference to user name and address information. Also, in embodiments that use this step, it is the first step that precedes any product selection.

The user in Stewart does not enter personal contact information or location information where indicated by the Examiner in Examiner's steps b. and c. The user's location (AP or GPS points) are determined by the handheld equipment and the communication server. (Stewart, col. 6, lines 14-24; col. 27, lines 5-16.) The user's location is not based on user entry of location data. The user's personal contact information is determined by pre-registration with the service or pre-configuration to be cross-referenced to an equipment ID number. (Stewart, col. 6, lines 58-64; col. 11, lines 21-31)

In fact, Stewart does not need to ask the user to enter a location. The computer knows where the user is by determining the access point (AP) or user's GPS location. The access points or AP's in Stewart are known to the system and defined before the user signs on.

Therefore, the Examiner's citations to Stewart do not follow Applicant's claimed sequence. The Examiner avoids addressing the sequencing of actions in the claims by mixing elements from different embodiments in Stewart and Scroggie, which employ different sequences of actions to carry out different methods.

To give an example of the importance of sequencing, suppose the three steps of a method claim to shaving were:

1. R-Taking a razor out of the medicine cabinet;
2. IB-Inserting a blade in the razor; and
3. P-Pulling the razor across the skin.

If the sequence is ignored, this method of shaving could be read on the following sequence:

1. R-Taking the razor out of the medicine cabinet;
2. P-Pulling the razor across the skin; and
3. IB-Inserting the blade in the razor.

The second sequence produces quite a different result to the user, in the first case the user receives a shave, in the second case the user does not receive a shave from the same steps recited in a different sequence. It is no exaggeration to say that the reading of the claims in the final Office action has also reached a dissimilar method, once the examples in the references of Stewart and Scroggie are reviewed and understood.

For the reading on Stewart, the Examiner has merged together the sequence of limitations in claims 76 and 85 that follow Steps 4-6 in Fig. 2, into fictitious individual steps b. and c. which lack the sequence of actions of Steps 4-6.

In doing so, the final Office action skips substantive operations of the claimed invention in Steps 4-6 which are recited in Claim 76.

As stated in claims 76 and 85, product is selected first, and then communicated to the website before the user is requested to enter personal ID data and a postal address code. The website then selects only one reseller from a plurality of resellers who could supply the product based on the comparing of the postal address to the marketing territory of one of the resellers.

Claim 76 can be summarized in the following sequence with designated letters with symbols for comparing the sequence of the steps to later sequences:

1. P (producer) selected by user and sent to website,
2. PR - (product) selected by user and sent to website,
3. CONTACT (e-mail address) and ZIP (code) requested of user,
4. CONTACT and ZIP entered by user, and sent to website
5. ZIP and MT (marketing territory) compared at website, assuming availability of PR in MT (product availability),
6. S (seller) selected by the system,
7. V (incentive voucher produced),
8. VC (incentive voucher communicated),

The Examiner's steps a. to f. sequence can be summarized as follows:

- a. P - (producer) selected by user,
- b. PR (product) and PC ID and (AP or GPS) entered by the user (Applicant's note: the AP or GPS is not entered by the user),
- c. PR (product) and PC ID and AP or GPS received by website,
- d. V (incentive voucher produced),
- e. VC (incentive voucher communicated),
- f. S selected based on (AP or GPS) and SA (seller address).

The Examiner first assumes that this sequence matches claim 76 except, the Examiner says that Stewart does not disclose use of a postal address code (ZIP), but that Scroggie uses a zip code (ZIP) which can be substituted for Stewart's AP or GPS points into the above sequence.

First, the Stewart steps b. and c. do not equate to steps 1.-4. above for claim 76, even apart from the substitution of a zip code (ZIP) for the AP or GPS.

Stewart uses a "log on" with a 32-bit PCD ID which is cross-referenced to pre-stored demographic information before the user selects a product (col. 12, lines 25-56). This is not personal contact information in itself.

Although Stewart, col. 12, lines 32-34, mentions the use of a user name and password, this user name and password are well known in the art of the Internet as a log-on sequence, where the log-on is cross-reference to a more formal user name and address information. The user name in a log-on sequence is typically a screen name or abbreviation, which is usually not capable of identifying a user without further information. Also, in embodiments that use this step, it is step a., which precedes any product selection, so neither the sequence of Applicant's steps nor the Examiner's steps in the final action are being followed in such a sequence.

The AP or GPS points in Stewart are generated by the equipment and not entered by the user, so steps b. and c. in the Examiner's reading of Stewart are not valid. And, in step d. there is no selection of a seller based on user location, the user selects the seller before the user signs on and also specifies trip end point locations for a trip, but does not enter the user's current location.

Second, the Examiner's citations incorrectly combine the embodiments in Stewart, which has two types of embodiments: 1) a selling of airline, auto rental and taxi services without vouchers and 2) a targeted advertising embodiment with vouchers (Figs. 12 and 12A).

In Stewart, the rental car embodiments, can be summarized as follows:

1. R - (Registration) Customer pre-registers, pays fee, provides demographic information (DEMO) (col. 20, lines 47-54).
2. L - (Log on) by customer (col. 20, line 53) with PC ID.
3. LOC - (Location, AP or GPS) transmitted to server (col. 20, line 47 and col. 6, lines 21-24.)
4. D (destination airport or city for pickup) entered by customer (col. 20, line 53; col. 21, lines 7-12),
5. P (producer) selected by Customer or by DEMO (col. 20, lines 47-66),
6. PR (product) selected by Customer or by DEMO (col. 20, lines 47-66),
7. PRICE sent to customer (col. 21, lines 15-19), and
8. Customer travels to D (destination) to pick up PR (col. 21, lines 5-18).

The differences from the claimed sequence are:

1. There is no incentive voucher (V) in these embodiments of Stewart.
2. There is no producer (P) separate from the seller (S) they are merged in the rental car outlet.
3. The customer specifies a rental car outlet location (D) to pick up the car. The user has directly selected the product (P) and the seller (S) after providing any

identification (L). There is no transparent selection of a reseller by a website computer from a plurality of available resellers in the same distribution network offering the same product at possibly different prices, based on the user's mailing address zip code.

4. It is well known in the art of travel reservations that customers receive basic rates (PRICE) on car rentals, airfares and hotel reservation during the online sessions for these services. Taxes, insurance and extra hours sometimes prevent an exact total cost from being available then. But the basic rates provide an approximate PRICE. This takes these examples out of the claimed sequence, where PRICE is not communicated, but incentives (V) are communicated.

5. All 49 claims of Stewart recite that a content of said information (sent to the portable computing device) is dependent upon the "user's location and the demographic information.") (Which is pre-stored.)

The embodiments in Stewart are dependent on the term "demographic information" which is intended to include, but is not limited to, information such as: full name, address, contact information such as telephone number and email address, daily schedule, family members, hobbies, past purchases, spending habits, buying preferences, hotel preferences, restaurant preferences, rental car preferences, banking habits, memberships (e.g., American Airlines Advantage Program, Hertz Number One Club Gold), associations, and other information. The term "past activities" may be used synonymously with the term "demographic information". (Stewart, col. 10, lines 8-22; and col. 11, lines 21-31). Since Stewart is using handheld devices, it would be impractical to input this information in an online session.

If the customer is a Hertz Gold customer, the customer has preselected Hertz before the customer ever logs onto the system through the GPS point. If the customer has specified Hilton hotels or Holiday Inn hotels, the customer has selected the hotel provider before the customer ever logs onto the system through the GPS point.

6. At this point, the reader is referred to Screen 4 of the Wayport network information in Appendix B, Exhibit 2. In Wayport system, the commercial embodiment of Stewart, the system basically has to know if the traveler wants to depart (D) from Dallas (27) or Houston (1, 2, 13), no matter where the traveler is (LOC) between Dallas and Houston. The traveler also designates where the traveler wants to pick up a rental car (D). The system doesn't make that choice for the traveler based on user GPS location.

7. Stewart's commercial embodiment (assignee is Wayport) is a Wayport mobile system requiring a user to subscribe, provide ID information and pay a user fee before using the service creating a separate online session or providing ID information before shopping. This does not meet the limitations of claim 76 and 85 in requesting contact information only after the product has been selected. Stewart requires personal information (and a fee) before using the system. See Appendix B, Exhibit 2, and the Stewart '405 patent, col. 15, line 16 to col. 16, line 54 as quoted below:

For example, one geographic based communication service may be referred to as a WAYPORT network (WAYPORT is a Registered Trademark of Wayport, Inc. of Austin, Tex.).

. . . More specifically, a (customer) that has registered with a WAYPORT network (e.g., has entered demographic data and agreed to pay transaction costs) may not need to register with XYZ.

For example, a WAYPORT network-registered (customer) connects to a XYZ network in the downtown hotel. The XYZ network notices from the PCD ID information that the (customer) is not registered on the XYZ network, but is registered on the WAYPORT network. The XYZ network may perform a verification of the PC ID by querying a database of registered PC IDs on the WAYPORT network. The XYZ network may acquire demographic information on the credentials of the (customer). If the credentials of a (customer) are not acceptable, access to the XYZ network may be denied. If the credentials are acceptable, the XYZ network may grant the (customer) access to various goods, information and/or service providers. The XYZ network may inform the (customer) (via a message on the (customer)'s PCD) that there is an additional cost for accessing the XYZ network as a non-registered user. The (customer) may then have the choice of paying the additional fees for the services or disconnecting. In addition, the (customer) may have the option of registering with the XYZ network to avoid paying 'roaming' fees.

The Stewart targeted advertising embodiment in Figs. 12A and 12B has quite a different sequence than the airline or rental car embodiments.

1. L - (Log on) by customer with PC ID
2. LOC - (Location, AP or GPS) automatically transmitted to server.
3. V (incentive voucher produced),
4. VC (incentive voucher communicated),
5. P and PR first disclosed to Customer,

Here the product selection drops even further down the sequence than in the airline and rental car embodiments.

The Examiner cites the following embodiment of this kind of advertising in rejecting claim 85 where an unsolicited offer is received on a mobile device:

"For the next 15 minutes, all watches are 25% off at ABC Watch Company, which is located in the A concourse, between gates 14 and 16" (col. 27, lines 30-32.)

Did any user say, in this example of Stewart, that they wanted a watch? No, the unsolicited advertisement was sent to the user based on some proximity to a jewelry store that suggested to the seller that the user should buy a watch at their store. The location of the user was determined by equipment: the user did not input any location information and the product was determined by the seller before the user expressed any interest in the product.

Actually, Stewart says that this type of offer might be used to get a customer to bypass one store to go to a store farther away (col. 26, lines 42-46). This teaches away from the present invention which seeks to prevent a customer from bypassing a closer reseller to redeem an incentive at a reseller with a lower base selling price, but a more distant location. Duchow, paras. 0006, 0009, 0010 and 0012.

"Targeted advertising" is an unsolicited offer by a seller of a good or service, sometimes with a discount, which is directed to a customer based on pre-stored demographics (where

“targeted” derives from; targeting a demographic group.) They differ from the present invention where the user indicates an interest in buying a specific product before being asked to select a product and then enter personal information before receiving an incentive.

The Examiner cites the unsolicited advertising example in col. 27, lines 26-37 as supporting the reading of the voucher generation step in claim 76 on Stewart, but cites the non-voucher airline and car rental embodiments in Stewart as providing the remaining limitations in claim 76. The Examiner also cited col 28, lines 36-40 and col 27, lines 26-37 in rejecting claim 85, but cites non-voucher embodiments in Stewart as providing the remaining limitations in claim 85.

Although Stewart mentions that unsolicited offers can be based on known (machine-known) geographic location of a user (Stewart, col. 27, lines 21-22), this is in taken out of a context that discusses the use of demographic information (see col. 27, lines 17-20 and 22-25 and examples which follow.) Offers based solely on location, would be “random” and not “targeted,” as that term is used in the advertising field.

In any event, in this “targeted advertising” mode of operation, the user does not select the product in the online session. Both the product and the incentive are unsolicited offers by the seller to the consumer.

In making the finding that Stewart discloses all of the subject matter of claim 76 except zip codes, the Examiner states that “Stewart will select one reseller (claim 76 says “only one reseller”) based on the user's location and/or demographic information.” None of the detailed embodiments cited by the Examiner in the rejection of claim 76 select the seller solely by the user's physical location entered by the user.

The passages cited in the Office action are cited out of context and do not support the stated propositions. The customer did not enter either location or product data. These examples do not solve any problem of directing customers to one

of two possible stores in the same distribution network where the stores can offer different prices.

The sequences of actions in these embodiments are different, making their combination an error in not considering the claimed subject matter as a whole under 35 U.S.C. 103(a) and not considering the sequences of actions in the references as a whole when they should be considered as such.

Fourth, the embodiments in Scroggie use a reverse sequence from either Applicant's 1 to 8 or the Examiner's a. to f., such that it is not apparent to combine the two references into any workable embodiment.

Scroggie's operational sequence is as follows:

1. ID - Customer logs on with ID (Figs. 1, 2, 3 and 9, col. 5, lines 62-64; col. 6, lines 46-48),
2. ZIP (code) requested of user, (col. 6, line 55 to col. 7, line 8),
3. ZIP entered by user, (col. 6, line 55 to col. 7, line 8),
4. Multiple S's (sellers) within ZIP proposed to Customer, (col. 8, lines 45-49),
5. S (seller) directly selected by Customer, (col. 8, lines 50-53),
6. Multiple V's (incentive vouchers) displayed to customer with products (P), (col. 8, lines 54-55), and
7. Multiple V's (incentive vouchers) and products (P) selected by Customer, (col. 8, lines 56-57).

In Scroggie, Step 1, the user must then "log on" as described relative to Scroggie Figs. 2 and 3 before using the system and in some cases to pre-register. (See Scroggie, col. 3, lines 10-12: the method comprising the steps of: (1) registering as a customer by providing at least an individual identification, a postal region code, and retail store selection.)

In Step 2, Scroggie asks for the zip code. When it receives the zip code in Step 3 it returns a list of sellers within the zip code region in Step 4, and allows the user pick

the seller (Step 5). It then shows a plurality incentives (V) for a plurality of products (P) in Step 6. The customer selects multiple V's in Step 7 and may redeem them at more than one location within ZIP.

While Scroggie uses zip codes, it requires the user to first "log on" or first enter the zip code to select a plurality of sellers in the zip code territory selected by the user and then allows the user to pick among the resellers who the user wishes to visit. This is a reverse sequence from the claimed invention with different results.

This was demonstrated for the 22202 zip code during the Interview and is shown for the 53211 zip code in App. B, Exhibit 1. The zip code is entered first (App. B, Ex. 1, Screen 1), the reseller is picked second from three resellers (App. B, Ex. 1, Screen 2), before the incentives are picked third (App. B, Ex. 1, Screen 3), and the incentives are known before they and their corresponding products are selected from a grocery list of items. This is a totally different sequence from both claim 76 and Stewart.

Scroggie uses the zip code to define a whole region of sellers and allows the user pick the seller (see underlined language above). It also usually distributes more than one incentive.

All of Scroggie's ten claims speak either in terms of "regional" incentives, or of "identity information" being submitted as a first step before choosing a seller, a product or an incentive. (See claims 1-10 in cols. 14-18 of Scroggie).

As a result of not considering the references as a whole, the Examiner has lifted a Zip code out of a sequence in Scroggie where it is not used to select an individual seller, and imported it into Stewart in place of a GPS point which is also not used to select a single reseller from multiple possible resellers.

b. REASONS THAT ONE OF ORDINARY SKILL IN ART WOULD NOT  
COMBINE THE TEACHINGS OF STEWART AND SCROGGIE AS  
SUGGESTED IN THE FINAL ACTION.

The problem in the invention is how to provide incentives to customers without having them take the incentive to an out-of-territory reseller offering a lower price than an in-territory reseller. Duchow, paras. 0006-00012.

Stewart is a mobile wireless system which relies on predefined AP points or GPS points to locate the user, but the user doesn't enter the AP points or the GPS points to show the user's location. Stewart does not use the AP points or GPS points to pick a seller, but instead often uses a user's intended destination.

The user may enter a 32-bit equipment ID number, but this depends on pre-stored registration information to actually identify the user. The user's location is still determined by the AP or GPS points. For the most part, Stewart provides services without discounts. The primary discount embodiment is the targeted advertising embodiment (Fig. 12A), which is an unsolicited offer of a product and incentive.

Stewart would not substitute zip codes of Scroggie for GPS points because Stewart is a mobile system, in which zip codes are not suitable for use. Mobile devices do not identify where they are by zip codes.

While Scroggie uses zip codes, it requires the user to first enter the zip code to select a plurality of sellers in the zip code territory selected by the user and then allows the user to directly select the reseller who the user wishes to visit. The product and reseller selection sequence is reversed and the user directly selects the reseller. This is a totally different sequence from both claim 76 and Stewart.

Although there are multiple embodiments in Scroggie, they follow these general principles and the Examiner has not pointed out any exceptional embodiments.

For its invention, Stewart requires user identification to log on to the Stewart system (See Stewart, Summary of the Invention, second and third paragraphs.) This does not meet

the limitation of claims 76 and 85 in requesting contact information after the product has been selected by the user. Scroggie also requires a log-on (Figs. 1, 2, 3 and 9.)

Although Stewart mentions the possibility of non-registered users in col. 12, line 57 to col. 13, line 45, it is unclear what, if any services, would be offered in exchange for what registration, ID or demographic information. It is not stated that product incentives would be offered. If they were offered, as part of targeted advertising, they would require advance demographic information.

Therefore, the substitution suggested by the Office action would not be made because the 1) the functions of the location information in Stewart and Scroggie are different, 2) their sequences are different from each other and from claims 76 and 85 and 3) there is no motivation to solve the problem that is solved by the present invention.

c. PATENTABLE DIFFERENCES NOT FOUND IN STEWART AND SCROGGIE EVEN IN COMBINATION.

First, with the invention in claim 76, there is no sign-in (Stewart, Scroggie) or zip code (Scroggie) required before selecting a product. The user shops for products before the user inputs personal contact information and receives a voucher limited to one reseller.

Second, in the present invention, personal contact information and a zip code are requested after a single product has been selected during the shopping phase and before the selection of the reseller and before the communication of a discount.

Third, the computer selects a single reseller based on the zip code information, product availability and the marketing territory of the resellers from a plurality of resellers who could offer the same product. The customer does not directly select the reseller through preferences or a mouse click as in Stewart and Scroggie.

Fourth, the voucher is communicated to the customer or to the reseller location, and the voucher is limited to redemp-

to the single reseller selected by the computer based on factors other than user convenience.

In Scroggie, the zip code is input first to narrow the groups of resellers within a zip code region and then, the user directly selects the seller as was demonstrated during the Interview for the 22202 zip code and in Appendix B, Exhibit 1. The only thing in common between Scroggie and claim 76 is that a zip code is used (but for different purposes) and coupons or incentives are provided (but on different terms relative to the resellers.)

In Stewart, personal contact information or demographic information, is required in almost all embodiments before the user can utilize the service.

It is noted here that Examiner has taken small phrases from the patents of Stewart and Scroggie out of context, to support propositions that the users in Stewart and Scroggie don't have to be registered, or that demographic information is not needed, or that the computer picks a single reseller or that an incentive offer is communicated in one online session. The quoted passages in the Office action are out-of-context statements that do not support the propositions for which they are cited when the working embodiments are considered as a whole.

Stewart uses a point-to-point AP or GPS comparison, but not for purposes of picking the reseller. Stewart lets the user pick an airport or city travel destination (Col. 20, line 53; col. 21, lines 7-12 and Appendix B, Exhibit 2), rather than having the user directed to an airport or a city. The present invention is advantageous for resellers having territories equal to or larger than one zip code area. There is no motivation for Stewart or Scroggie to narrow the number of resellers or number of incentives to one. If only one reseller is provided in Stewart, it is due to lack of availability of car rentals or hotels in a specific area.

Fifth, there is a fundamental disagreement between the Applicant and the Examiner on the teaching of the present invention. The Applicant claims a teaching of comparing a zip code to a marketing territory, which was the point of the

discussion in paragraphs 0001-0012 of the specification. The Examiner wishes to ignore this part of the application and focus on matters again taken out of context from the specification to maintain that both the prior art and the Applicant teach a point-to-point geographic approach, such as a user GPS location and the street address of an individual store.

It is believed, however, that even if Applicant were limited to claiming a customer zip code closest to a reseller store address rather than being in, or closest to a territory, that the claims would still be patentable over the prior art discussed above, because none of the prior art follows the sequence of the claimed invention as to product selection, the provision of postal address code and personal contact information, and the computer selecting only one reseller based on product, customer location and assignment of the customer to that reseller based on factors other than user convenience, and communicating the incentive to the customer for a single reseller to the exclusion of other possible resellers.

For all of these reasons, it is respectfully requested that the Board determine that the claims are not obvious over Stewart in view of Scroggie.

d. THE PERSON OF ORDINARY SKILL IN THE PERTINENT ART.

A person of ordinary skill in the art to which this subject pertains is believed to be a dealer in commercial products having a knowledge of distribution agreements and marketing techniques, and would not be an engineer possessing only skill in Internet website operations. The person would have a 4-year non-technical degree or from five to eight years of commercial experience, with some knowledge of the Internet, but again not necessarily in detailed engineering implementation details, as such a person could call upon employees or consultants to provide the necessary implementation details.

e. REASONS IN SUPPORT OF A CONCLUSION OF NONOBVIOUSNESS  
IN THIS CASE.

First, the reading of the claims by the Examiner does not provide a prima facie case of obviousness due to not addressing all of the limitations of the claims, mismatching the sequences in the references with the claimed invention and, in some cases, not understanding the content of the references in the context of workable embodiments.

Second, the claimed differences from the prior art cited above are nonobvious, because only the inventor has recognized the problem in the art of providing Internet delivery of purchaser incentive vouchers where dealers have assigned marketing territories and more than one dealer is available to sell the product, but at different prices. Most of the prior art either doesn't know about this type of distribution network, or doesn't offer the type of incentive vouchers offered by the invention, due to the different nature of their businesses.

Third, only the inventor has recognized a method that achieves marketing results in letting shoppers shop without requiring large amounts of information, and then intriguing shoppers with the offer of a discount if they will input their contact information, and then further intriguing shoppers by offering a purchase incentive if they will visit a specific reseller.

Fourth, the invention also selects that reseller in an unobtrusive manner. Because the prior art neither discusses nor understands these differences or the reasons for them, the differences are nonobvious. In support of the improved marketing results of using the claimed invention, the Applicant submitted a signed declaration of the inventor (Appendix B, Exhibit 4) discussing the marketing benefits of the invention, besides simply offering the purchasers a discount.

Fifth, the invention has had some licensing and commercial success as shown by the declaration of the inventor (App. B, Exhibit 4). However, due to the long pendency of this patent application, the inventor is not presently licensing the

invention until he receives a patent. As a result, the Applicant has been able to change its status to a small entity for purposes of this appeal. This application is an example in which the lack a patent grant has frustrated the Constitution, Art. I, Sec. 8, cl. 8 authority to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive rights to their writings and discoveries." The long pendency in the USPTO has actually retarded the licensing, commercial exploitation and popularization of this invention, which in the market, like the USPTO, has not been fully appreciated.

### 3. CLAIMS 77 AND 86 ARE NOT OBVIOUS IN VIEW OF STEWART AND SCROGGIE.

The invention is further distinguished from the prior art in claims 77 and 86 by reciting that "the prospective customer's control over selection of the reseller is limited to the customer entering the selection of the only one product and entering the postal address code."

The Examiner rejected these claims because he said that Stewart discloses that the system selects the local retailer (specific hotel) automatically once the customer has selected the producer and desired product (and location information). Thus, the customer's control over selection of the reseller is limited to entering such information (producer, product, and location).

In Stewart, the system does not pick the specific hotel solely from user present location (AP or GPS) and type of room entered during the online session to the exclusion of other hotels in the area that have the product. Stewart, col. 22, line 49-53, concerning the hotel example, says:

For example, a MU (user) is able to designate a specific hotel, but if a specific hotel is not designated, the service provider may be operable to select the hotel that most closely matches the preferences of the user and/or the geographic proximity of the user.

The fact that the user has the first option of directly selecting the hotel takes the example outside the language of the claim 77 and claim 86 as well as outside the language of claims 76 and 85, and outside the objects of the present invention. The reliance on user preferences suggests an online session prior to the shopping session, because it would have been impractical to enter that kind of information on the handheld devices of Stewart. The cited example also selects the hotel based on user convenience or a difference of the offered product (service) as opposed to commercial considerations, such as preventing a user from passing one hotel for another hotel to redeem an incentive. In fact, no incentive is offered in the example.

Because the example cited in the Office action does not stand for the proposition cited, and because the claimed subject matter in claims 77 and 86 and the references are not being considered "as a whole" in this rejection, it respectfully requested that claims 77 and 86 be allowed, and the Examiner's action be overruled or withdrawn.

#### 4. CLAIMS 78 AND 87 ARE NOT OBVIOUS IN VIEW OF STEWART AND SCROGGIE.

The invention is further distinguished from the prior art in claims 78 and 87 by reciting that "the reseller (not to be confused with the producer) is selected by the website in a sequence in which a purchase price of the product is not displayed to the prospective customer."

This claim distinguishes from many websites seen in the art today which are basically selling goods or services with prices shown or communicated during the transaction.

The Examiner said in the rejection that Stewart further discloses "transmitting a message to the customer after a car reservation is completed indicating the preparedness of the car and then adds that the price of the product may also be transmitted to the customer (col 21, lines 12-19). Thus, it is disclosed in the first instance that the message may be

transmitted to the customer without the price also being transmitted (and displayed)." (Our emphasis.)

It is well known in the art of travel reservations that the user gets basic rate information on car rentals, airfares and hotel reservation during the online sessions for making reservations using these services. Taxes and insurance sometimes prevent an exact total cost from being available for car reservations and hotel reservations. It is at best an estimate for auto rentals.

The statement from Stewart is not accurately quoted by the Examiner. The statement actually says that the total cost of the rental may also be transmitted to the customer (Stewart, col 21, lines 12-19). This does not at all imply that if the total cost cannot be transmitted, that rate information or an approximate cost is not transmitted. Such information is customarily transmitted and may be required to form a firm reservation.

In addition, because there is no incentive voucher being offered in the car rental example, there is no relevant motivation in the car rental example to send a price or not send a price, other than to fulfill customer expectations of receiving a price. The car rental location is selling services which have customary rates. The claimed subject matter in claims 77 and 86 and the references are not being considered "as a whole" in this rejection.

The invention claims transmitting a voucher without the selling price which is important to getting customers in the door. This is advantageous in commercial fields where the prices are not well known, and where prices are substantial, which is not the case for car rentals and hotels (published rates) and grocery stores and fast food outlets with small prices per product, the approximate prices being known to the customer.

Because the example cited in the Office action does not stand for the proposition cited, and because the claimed subject matter in claims 78 and 87 and the references are not being considered "as a whole" in this rejection, it respectfully

requested that claims 78 and 87 be allowed, and the Examiner's action be overruled or withdrawn.

5. CLAIMS 79 AND 88 ARE NOT OBVIOUS IN VIEW OF STEWART AND SCROGGIE.

The invention is further distinguished from the prior art in claims 79 and 88 by reciting "the selection of the one product, the entry of personal contact information and communication of the voucher occurs in only one access to the website."

This is meant to distinguish from systems utilizing pre-registration (Stewart and Scroggie) and pre-stored demographic and preference data (Stewart and Scroggie).

The Examiner states in the final action that Stewart also discloses the customer entering the data and receiving the information during a single online session (citing col 22, lines 49-50).

Stewart, col. 22, line 49-53, concerning the hotel example, says:

For example, a MU (user) is able to designate a specific hotel, but if a specific hotel is not designated, the service provider may be operable to select the hotel that most closely matches the preferences of the user and/or the geographic proximity of the user.

The fact that the user has the first option of directly selecting the hotel takes the example outside the language of the claim 79 and claim 88 when considered with claims 76 and 85 from which they depend. The reliance on user preferences suggest an earlier network access to submit the user preferences. The "most closely" language means that different products are being offered. The cited example selects the hotel based on user convenience or product differentiation as opposed to the other considerations, such as preventing a user from passing one hotel for another to redeem an incentive. In fact, no incentive is offered in the example. The example does not stand for the proposition cited in the Office action.

It is also clear from reading further that in the only detailed embodiment that is disclosed, the user must have pre-stored demographic information to be passed through to the hotel (col. 22, lines 53-65) or other computer accessible information such as credit card information. There is no detailed embodiment which illustrates the user entering all of the needed information in one online session. And, no incentive voucher is being offered in this embodiment. The two lines cited by the Examiner are taken out of context, and there is no motivation to combine them with any other embodiment under discussion including one that offers incentive vouchers.

Because the example cited in the Office action does not stand for the proposition cited, and because the claimed subject matter in claims 79 and 88 and the references are not being considered "as a whole" in this rejection, it respectfully requested that claims 79 and 88 be allowed, and the Examiner's action be overruled or withdrawn.

6. CLAIMS 80 AND 89 ARE NOT OBVIOUS IN VIEW OF STEWART AND SCROGGIE.

The invention is further distinguished from the prior art in claims 80 and 89 by reciting that "the voucher is communicated for only one product for each access of the website."

The Examiner supports this rejection by saying that normally only one voucher is given for each product. But the claim says that the system limits the vouchers to one per online session. This is not addressed in the Examiner's discussion of why multiple vouchers would not be offered for the same product.

This subject matter is meant to distinguish from Scroggie where multiple incentives are offered in each online access and from the Stewart travel reservations where no incentives are offered. The applied art runs counter to the Examiner's discussion of design choices.

For these reasons, it respectfully requested that claims 80 and 89 be allowed, and the Examiner's action be overruled or withdrawn.

7. CLAIMS 81 AND 90 ARE NOT OBVIOUS IN VIEW OF STEWART AND SCROGGIE.

In claims 81 and 90, it is further recited that the "pre-defined marketing territory" is "an exclusive marketing territory assigned to the reseller by the producer of the selected product."

The Examiner stated in the rejection that:

It is inherent that if the product is an exclusive product, i.e. one which is sold by only one retail chain, such as a franchise (e.g. Skilcraft Tools™ sold by Sears), that the system would display the local or closest Sears store. Likewise, if the user selected Kentucky Fried Chicken (KFC) as the manufacturer and fried chicken as the product, the system would select the KFC franchisee which had been assigned coverage of the geographic location of the user. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that Stewart would select the reseller which had been assigned coverage of the geographic location of the user.

Applicant traverses these findings because the cited distribution systems do not follow the operation of the claimed invention. The selection of stores in these systems is based on buyer convenience and is not based on the issuance of an incentive voucher directing the buyer to a specific reseller to the exclusion of other possible resellers.

In the Sears example, presumably the price of the Skilcraft tool is the same at all Sears stores, and this is not a situation where Sears is offering a coupon to be redeemed at any Sears store in the country or region of the country for a tool which is sold at different prices at different Sears stores. Sears does not have a need to direct buyers to particular stores, since the locations of its stores are well known and most products can be ordered without visiting another store. Therefore, Sears would not use the method of the present invention to limit a customer to redeeming the

incentive at a single reseller having an exclusive marketing area as claimed in claims 76 and 85, as further defined in claims 81 and 90. The individual Sears stores have not been shown in the record to have exclusive marketing territories relative to all other Sears stores.

With respect to chain restaurants, Applicant agrees with the Examiner that the producer and seller are merged into store locations in restaurant services, so they also do not fit the rationale or claim language of the invention. The chain restaurants are not considered to have exclusive marketing territories in that it is relatively easy to visit a further store location in a metropolitan area and these restaurants often use group advertising showing all participating locations. During the prosecution, the Examiner has cited an example of a Kentucky Fried Chicken restaurant in a rural area that drew customers from miles around. People did not travel there for a discount on an individual meal because the cost of travel would outweigh the incentive. There was no other reseller in that example, or no reason for the customer to drive past that outlet to another Kentucky Fried Chicken restaurant even farther away. Having one *de facto* exclusive area is not what the invention is about. The invention applies to distribution systems having two outlets with adjoining exclusive areas, where it is practical for a customer to drive past one to the other to obtain a lower base price to apply the incentive.

The Examiner is correct that a voucher for Sears or Kentucky Fried Chicken will be issued for the nearest location as a matter of buyer convenience. The present invention is not based on buyer convenience and is able to be used for distribution networks in which there are dealers of large manufactured products having relatively large marketing areas, where a user will drive a distance past one store to another to get a lower price on an expensive item.

Nothing in the example of Sears or Kentucky Fried Chicken examples makes this obvious. This is a case where the Examiner is considering Applicant's invention to be issuing a coupon to the nearest store address based on user convenience rather than

issuing an incentive to an assigned reseller based on product availability and reseller territories or assignment of customers to a specific reseller for reasons other than user convenience.

For these reasons, it respectfully requested that claims 81 and 90 be allowed, and the Examiner's action be overruled or withdrawn.

8. CLAIMS 82 AND 91 ARE NOT OBVIOUS IN VIEW OF STEWART AND SCROGGIE.

The invention is further distinguished from the prior art in claims 82 and 91 by reciting that "the selection of the reseller does not utilize pre-stored demographic data or direct customer selection through a screen display."

The Examiner defends the rejection of this claim on the same grounds as the rejection of claims 79 and 88. The Examiner states in the final action that Stewart also discloses the customer entering the data and receiving the information during a single online session (citing col 22, lines 49-50). For reasons stated above, this passage doesn't necessarily mean a single online session.

The embodiment cited at col. 22, lines 49-50 has a first option of the user directly selecting the hotel, so this takes the example outside the express claim language of claims 82 and 91, when considered with the claims 76 and 85 from which they depend.

It is also clear from reading further that in the only detailed embodiment that is disclosed, the user must have pre-stored demographic information to be passed through to the hotel (col. 22, lines 53-65) or other computer accessible information such as credit card information. There is no detailed embodiment which illustrates the user entering all of the needed information in one online session. This would have been impractical and not a "user friendly" system with the devices of Stewart. And, no incentive voucher is being offered in this embodiment of Stewart. The two lines cited by the Examiner are taken out of context, and there is no motivation

to combine them with any other embodiments under discussion including ones that offer incentive vouchers.

For these reasons, it respectfully requested that claims 82 and 91 be allowed, and the Examiner's action be overruled or withdrawn.

B. THE AMENDED DEFINITION OF PRODUCTS FOR PURPOSES OF SUBMITTING THESE CLAIMS IS NOT NEW MATTER. THIS GROUND OF REJECTION IS ARGUED AS APPLIED TO ALL CLAIMS 76-93.

The Office action objected under 35 U.S.C. 132 to Applicant's amendment of the definition of "products" to include "goods and not services unless specified." The Office action cited as support *Schering Corp. v. Amgen, Inc.*, 222 F.3d 1347, 1352-1353, 55 USPQ2d 1650, 1654 (Fed. Cir. 2000) for the proposition that this amendment would change the scope of the invention as held impermissible in *Schering*.

The cited case isn't applicable because it concerned a specification amendment to broaden a claim to include composition-of-matter embodiments not known at the time of filing. This is not parallel to the situation in this application.

In the present application, the Applicant is only acting as its own lexicographer, as authorized by *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995) (in banc).

Applicant first follows the language of Fig. 2, as closely as possible, for ease of reading and in view of the literal style of examination evidenced in this application. Applicant does not desire to substitute "goods" for "products" and "producer of the goods" for "producer" in numerous appearances in the claims, due to effect on readability of the claims. However, Applicant is satisfied to limit the claims on this appeal to "goods" against the prior art. It is Applicant's prerogative to limit the claims against the prior art. Applicant is merely trying to impart definiteness to the terms of the claims.

In any event, if Fig. 2 is considered to disclose both a goods embodiment and a services embodiment, it would seem that Applicant is entitled to limit the claims to the goods embodiment without making the claims harder to read.

The terms "products," "goods" and "services" are all general terms known in the art. The proposed definition limits the claims in a way that is understood by one of ordinary skill in the art, whether it is included in the specification or in the file history, but it would provide better notice to the public if included in the specification.

Applicant wishes to limit the products in the present claims to "goods" to point out the advantages to dealership networks that offer goods over the service providers in Stewart.

Stewart provides services of the nature in which there is not a separate producer and seller - they are one and the same. Example: McDonald's make and sells the hamburgers in one location - producer and seller are merged. The same is true of airlines and car rental services cited in Stewart.

Even if the dealership networks of the present invention offered services, they would be different distribution networks than are used by the travel services sellers in Stewart.

Therefore, Applicant respectfully requests the Board to overrule the Examiner on this issue. And if the Board decides in favor of the Examiner on this issue, the Board is still respectfully requested to determine that claims 76-93 are not obvious over the cited and applied prior art.

C. THE AMENDMENT TO PARAGRAPH 0045 IS NOT NEW MATTER AND IS MADE TO MAKE THE SPECIFICATION CONSISTENT AND TO ENCOMPASS EXAMPLES THAT ARE APPARENT TO ONE OF ORDINARY SKILL IN THE ART TO WHICH THE INVENTION PERTAINS. THIS GROUND OF REJECTION IS ARGUED AS APPLIED TO ALL CLAIMS 76-93.

Paragraph 0045 was amended as follows:

"The structured computer program 130 selects the reseller ~~or resellers~~ that sells the product in memory 140 selected by the buyer 100 and that has the territory that includes,

or is are located closest to, the buyer 100 based on the zip code in memory 140 entered by the buyer."

The Examiner's reasoning that the insertion of the reseller's territory in paragraph 0045 is new matter is that it was not stated this way in paragraph [0045] as originally filed. However, Applicant is merely making a less definite description more exact, by applying the inherent result of incorporating the definition of reseller from paragraph 0006, as originally filed and the description in paras. 0009-00012.

Under 35 U.S.C. § 112, paragraph one, the application must contain sufficient disclosure, expressly or inherently, to make it clear to one skilled in the art that patentee was in possession of the claimed subject matter at the time of filing the application. However, it is not necessary that the language of the claims be described in haec verbis or ipsis verbis (Latin for "in the same words") in the specification in order for the description requirement to be satisfied nor does such a rule limit amendment of the description. *In re Edwards*, 568 F.2d 1349, 196 USPQ 465, 467 (CCPA 1978); *In re Driscoll*, 562 F.2d 1245, 195 USPQ 434, 438 (CCPA 1977); *In re Smythe*, 480 F.2d 1376, 178 USPQ 279, 284-285 (CCPA 1973).

Words added to the specification are not new matter where they are: 1) rephrasing of a passage, 2) an obvious error 3) a description of something that inherently functions in the manner described or 4) constitute an example though not described in the specification can be arrived at without undue experimentation. MPEP §§2163, 2164.

The Examiner's test of literalness (in haec verbis) for judging new matter and for judging support in the specification is too strict. The amendments to the specification meet the tests set forth by the Courts and the U.S. Patent and Trademark Office.

The modification of "closest to" language in paragraph [0045] simply recognizes that the resellers have territories as described in both the Background of the Invention and the Summary of the Invention. Paragraph [0006] defines "resellers" as follows:

[0006] A further disadvantage is encountered when the distribution system of the producer assigns geographic areas ("territories") to each reseller. In these types of systems, each reseller is given primary responsibility for the market within their territory and typically spends much time and money advertising, marketing, and promoting the producer's product with their assigned territory."

As stated in paragraph [0010] the objects of the invention are:

1. The invention will direct the buyer to a specific reseller for redemption.
2. The invention will eliminate the possibility of resellers selling to buyers outside their assigned territories. (The invention could not accomplish this if assigned exclusive marketing territories were new matter.)
3. The invention will allow producers to channel buyers to the appropriate location for the purchase based on a distribution structure (not merely for the convenience of the buyer).

Paragraph [0012] under "Summary of the Invention" goes on to say:

Finally, it provides the voucher containing the incentive to the buyer through electronic means, confirming that the benefit will be received that will be received if the buyer visits the reseller in the appropriate geographic or product area." (That means the geographic area assigned by the producer.)

The statement in paragraph 0045 that the reseller is selected who is closest to the buyer must be understood in terms of the reseller's territory being closest to the buyer and in some cases meaning that the buyer's zip code is within the territory. It is apparent from the entire disclosure that it is the territory of the resellers herein that is measured against the zip code and not a store address.

The invention as disclosed in paras. 0006 to 0012 of the specification, uses a territory (customer zip code area) -to-

territory (marketing territory of multiple zip codes) for comparison.

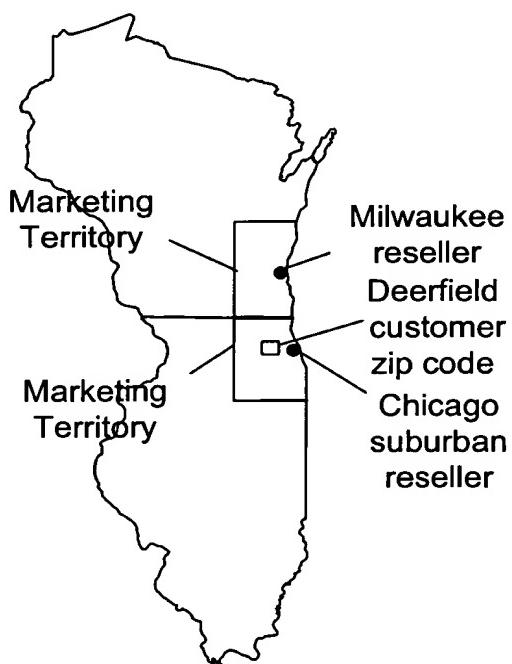
From paragraph 0006, and the Steps in Fig. 2, the following three straightforward examples can be easily constructed from the disclosure in paragraphs 0006-00012 and 0045 and are shown below.

Example 1. The zip code of the prospective customer in Kenosha is within the marketing territory of SE Wisconsin. Assuming product availability, the Kenosha customer will be directed to a reseller in Milwaukee if the marketing territory extends to the state line between Illinois and Wisconsin. This customer is "within" the territory and the reseller is "closest to" the customer in a broad sense.

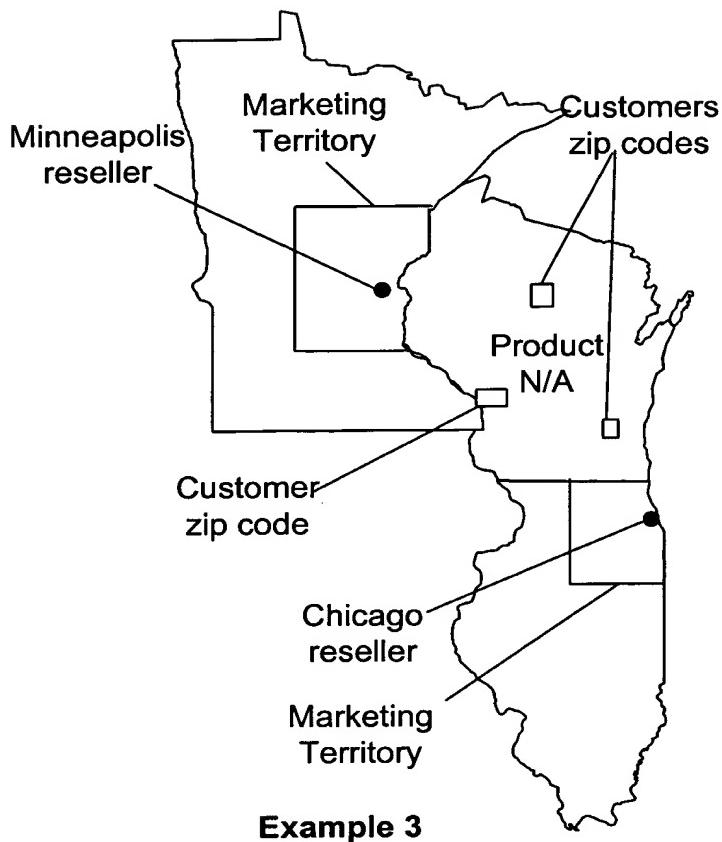


**Example 1**

Example 2. The zip code of the prospective customer in Deerfield, Illinois, is within the marketing territory of Northern Illinois. Assuming product availability, the customer will be directed to a reseller in the Northeastern Illinois if the marketing territory is defined as NE Illinois. This customer is "within" the territory of the reseller in Northern Illinois and the reseller is "closest to" the customer in a broad sense.



**Example 2**



Example 3. The zip codes of the prospective customers are in Wisconsin, but the product is not available in Wisconsin, it is available in Illinois and Minnesota. The customer is referred to Illinois, if the customer is located in eastern Wisconsin. The customer is referred to Minnesota if the customer is located in western or northern Wisconsin. This is an example of the "closest to" language both in an absolute sense of reseller store locations and also literally applying to reseller territories.

It is reasonable and legally proper for the definition of "resellers" (used in the claims) to be included in discussing the problem in the prior art and in the summary of the invention. It is not required by law to be in the detailed description. The Federal Circuit has said on occasions too numerous to cite herein that claims must be interpreted in view of the specification. The specification, according to 37

C.F.R. 1.77(b), includes the Background of the Invention as well as the Summary of the Invention.

The Federal Circuit has said many times in construing claims, that the specification of which the claims are a part, teaches about the problems solved by the claimed invention, the way the claimed invention solves the problems and the prior art that relates to the invention. These teachings provide valuable context for the meaning of claim language. *Eastman Kodak Co. v. Goodyear Tire & Rubber Co.*, 114 F. 3d 1547, 1554, 42 USPQ2d 1737, 1741 (Fed. Cir. 1997); *Laitram Corp. v. Morehouse Industries, Inc.* 143 F.3d 1456, 46 USPQ2d 1609 (Fed. Cir. 1998). Furthermore, when a patentee has used a claim term throughout the entire patent specification, in a manner consistent with only a single meaning, he has defined the term by "implication." *Bell Atlantic Network Services, Inc. v. Covad Communications Group, Inc.*, 262 F.3d 1258, 1268, 1271, 59 USPQ 1865 (Fed. Cir. 2001)

It is clear that the use of the term "reseller" in this application is meant to include the resellers with the primary or exclusive advertising rights for that territory to which all customers in the territory will be channeled to, provided that reseller has the product the customer has selected. The resellers talked about in paragraph 0006 are the same resellers talked about in paragraph 0010 and the same resellers talked about throughout the detailed description.

It is also apparent that where the customers are located by zip codes and the example marketing territories are parts of states that the customer will be referred to the dealer when the zip code is in the territory. The "closest to" language was generalized language in the original specification that has been made more precise by the proposed amendments without departing from the disclosure as originally filed.

It is believed, however, that even if Applicant were limited to claiming a customer zip code closest to a reseller street address rather than being in, or closest to a territory, that the claims would still be patentable over the prior art discussed above, because none of the prior art follows the

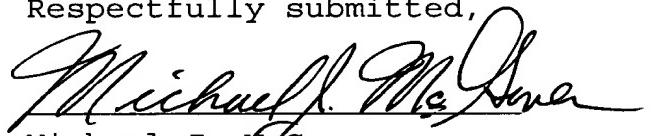
sequence of the invention as to product selection, the customer being requested to enter, and then entering customer location and contact information, and then the computer selection (not the customer selection) of only one reseller based on product and customer zip code location, from a plurality of available resellers, and communicating the incentive to the customer.

However, it is believed that Applicant should be able to claim the invention that Applicant regards as the invention under 35 U.S.C. 112, second paragraph, and not the invention, which the Examiner wishes to propose for purposes of examination.

Therefore, Applicant respectfully requests the Board to overrule the Examiner on this issue. And if the Board decides in favor of the Examiner on this issue, it is respectfully requested that the Board still decide that claims 76-93 are not obvious over the cited and applied prior art.

Respectfully submitted,

By:



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(414) 277-5725  
Attorney of Record



APPENDIX A

Claims on Appeal in Patent Application No. 09/682,876

1        76. A method of distributing a voucher to a prospective  
2 customer over the Internet which is redeemable for a  
3 producer's purchase incentive, said purchase incentive  
4 including at least one of: a purchase price discount, a free  
5 upgrade or a free accessory, on a purchase price of a  
6 manufactured product at a specific reseller; the method  
7 comprising:

8            providing at least one screen display to the prospective  
9 customer through the Internet to allow the prospective  
10 customer to select a producer;

11          receiving the selection of a producer from the  
12 prospective customer;

13          providing at least one screen display to the prospective  
14 customer through the Internet to allow the prospective  
15 customer to select only one product of said producer;

16          receiving the selection of the only one product of the  
17 one producer from the prospective customer through the  
18 Internet at the website;

19          after receiving the selection of only one product from  
20 said prospective customer and before displaying any amount of  
21 any purchase incentive to the prospective customer,

22          providing a screen display to the prospective customer  
23 which requests the prospective customer to enter personal  
24 contact information and a postal address code;

25          receiving at the website from the prospective customer  
26 through the Internet said personal contact information and  
27 said postal address code corresponding to the selection of  
28 the only one product;

29          after the website receiving the selection of the only  
30 one product and the personal contact information and the  
31 postal address code from the prospective customer,

32          the website selecting only one reseller from a plurality  
33 of available resellers based on the selection of the only one  
34 product and based on the postal address code being within, or

35 closest to, a pre-defined marketing territory of the  
36 reseller;

37 the website then generating a voucher having a time  
38 limit for redemption and having a producer's purchase  
39 incentive on the purchase of the only one selected product at  
40 the only one selected reseller; and

41 communicating the voucher for the only one selected  
42 product to at least one of the prospective customer and the  
43 selected reseller over the Internet.

77. The method of claim 76, wherein the prospective customer's control over selection of the reseller is limited to the customer entering the selection of only one product and entering the postal address code.

78. The method of claim 76, wherein the reseller is selected by the website in a sequence in which a purchase price of the product is not displayed to the prospective customer.

79. The method of claim 76, wherein the selection of the only one product, the entry of personal contact information and communication of the voucher occurs in only one access to the website.

80. The method of claim 76, wherein a voucher is communicated for only one product for each access of the website.

81. The method of claim 76, wherein the pre-defined marketing territory is an exclusive marketing territory assigned to the reseller by the producer of the selected product.

82. The method of claim 76, wherein said selection of the reseller does not use either pre-stored demographic data or direct customer selection through a screen display.

83. The method of claim 76, wherein the purchase incentive is a purchase price discount of the selected product.

84. The method of claim 76, wherein the personal contact information includes an e-mail address of the prospective customer.

1       85. A method of distributing a voucher to a prospective  
2 customer over the Internet which is redeemable for a  
3 producer's purchase incentive, said purchase incentive  
4 including at least one of: a purchase price discount, a free  
5 upgrade or a free accessory, on a purchase price of a  
6 manufactured product at a specific reseller; the method  
7 comprising:

8           providing at least one screen display to the prospective  
9 customer through the Internet to allow the prospective  
10 customer to select only one product of one producer;

11          receiving the selection of only one product of the one  
12 producer from the prospective customer through the Internet  
13 at the website;

14          after receiving the selection of only one product from  
15 said prospective customer and before displaying any amount of  
16 any purchase incentive to the prospective customer,

17          providing a screen display to the prospective customer  
18 which requests the prospective customer to enter personal  
19 contact information and a postal address code;

20          receiving at the website from the prospective customer  
21 through the Internet said personal contact information and  
22 said postal address code corresponding to the selection of  
23 the only one product;

24          after the website receiving the selection of the only  
25 one product and the personal contact information and the  
26 postal address code from the prospective customer,

27          after the website selecting only one reseller from a  
28 plurality of available resellers based on the selection of  
29 the only one product and based on the postal address code  
30 being within, or closest to, a pre-defined marketing  
31 territory of the reseller;

32           the website generating a voucher having a time limit for  
33   redemption and having a producer's purchase incentive on the  
34   purchase of the only one selected product at the selected  
35   reseller; and

36           communicating the voucher for the only one selected  
37   product to at least one of the prospective customer and the  
38   selected reseller over the Internet as voucher data.

86.   The method of claim 85, wherein the prospective customer's control over selection of the reseller is limited to the customer entering the product selection and entering the postal address code.

87.   The method of claim 85, wherein the reseller is selected by the website in a sequence in which a purchase price of the product is not displayed to the prospective customer.

88.   The method of claim 85, wherein the selection of the only one product, the entry of personal contact information and communication of the voucher occurs in only one access to the website.

89.   The method of claim 85, wherein a voucher is communicated for only one product for each access of the website.

90.   The method of claim 85, wherein the pre-defined marketing territory is an exclusive marketing territory assigned to the reseller by the producer of the selected product.

91.   The method of claim 85, wherein said selection of the reseller does not utilize pre-stored demographic data or direct customer selection through a screen display.

92.   The method of claim 85, wherein the purchase incentive is a purchase price discount of the selected product.

93. The method of claim 85, wherein the personal contact information includes an e-mail address of the prospective customer.



APPENDIX B

**PRACTICAL EVIDENCE in Application No. 09/682,876**  
**Submitted as part of Appeal Brief.**

Exhibit 1. - Screen Displays 1-3 from [www.supermarkets.com](http://www.supermarkets.com).

(from Information Disclosure Statement of Aug. 4, 2004)

Exhibit 2 - Screen Displays 1-5 from [www.wayport.com](http://www.wayport.com).

(from Information Disclosure Statement of Aug. 4, 2004)

Exhibit 3 - Interview Summary record of August 4, 2004, with attached screen displays illustrating parts of the claimed invention.

Exhibit 4 - Declaration of Mark Duchow filed Aug. 12, 2004.

# BEST AVAILABLE COPY



Information Disclosure Statement

Appl. No. 09/682,876

Screen 1

**Find Smart Way to Shop!**

Now you can save even more at checkout.

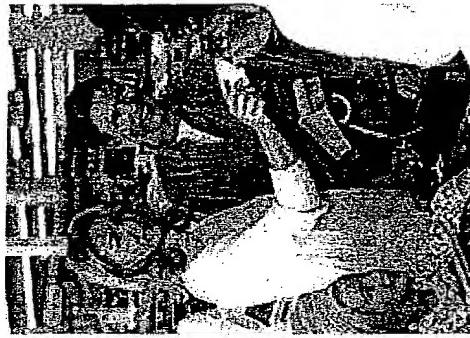
[How Does ValuPage Work?](#) [Tell A Friend](#) [Help](#)

## SAVE UP TO \$20.75

Enter your zip code  
below to start saving!

ENTER

### FEATURED SAVINGS



### FAST TRACK TO SAVINGS

Last supermarket selected:

Oscodrug

Other supermarkets:

None



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End-Smart Way to Shop!

Now you can save even more at checkout.

How does Valupage work? [Learn & Friend](#) [Help](#)

valupage

Select the supermarket where you want to save

Jewel-Osco, Oscodrugs, **piggly wiggly**

**FEATURED SAVINGS**



Information Disclosure Statement

Appl. No. 09/682,876

Don't see the supermarket of your choice?  
Enter a different zip code below:

\* click "Store Locations" to find participating stores

**FAST TRACK**  
TO SAVINGS

Last supermarket selected:  
Jewel-Osco

Other supermarkets:  
Oscodrugs

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<http://www.supermarkets.com/Page.pst>

3/4/04



How does Valupage work? [TELL A FRIEND](#) [HELP](#) [CHANGE SUPERMARKET](#) [FIND STORE](#) **SAVE UP TO \$20.75**

## QUICK AND EASY DIRECTIONS

To Get All Offers click [GET SHOPPING LIST](#).  
OR.

CUSTOMIZE shopping list by placing a check next to ADD TO LIST, then click on Get Customized Shopping List at the bottom of this page.

**STAY CLOSE TO THE SAVINGS!**  
Enter your e-mail address to start receiving Valupage E-mail:

[ENTER](#)

Screen 3

HTML  Text

## FEATURED SAVINGS

**SELECTED SUPERMARKET:** [OscosDrug](#)

ADD TO LIST

[VISIT PRODUCT SITE](#)

**SAVE 75¢**

Buy ONE Nescafe® Taster's Choice® Instant Coffee

4 oz. or larger



Zip Code: 53211

**It's as Easy as 1-2-3!**

**IN THE STORE:**

- 1 Buy one or more of the products listed on your Valupage Shopping List.

- 2 Give your Valupage Shopping List to the cashier to scan.

- 3 Get Valupage Savings to purchase anything on your next visit to the

## Savings Available Through 03/21/2004

**SELECTED SUPERMARKET:** [Fiesta Mart](#)

ADD TO LIST

[VISIT PRODUCT SITE](#)

**SAVE \$1.50**

Buy TWO Tyson® Boxed Frozen Boneless Breaded Chicken Nuggets, Patties, Tenders & Tenderloins

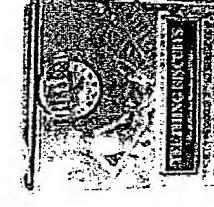


Excluding Sliced & Diced, Wings & Stuffed Chicken Entrees

[VISIT PRODUCT SITE](#)

**SAVE \$1.00**

Buy TWO Earth's Best® Organic Teething Biscuits



Made with no genetically modified ingredients

[VISIT PRODUCT SITE](#)

**SAVE \$1.00**

Buy TWO Earth's Best® Organic Infant Cereals

Made with no genetically modified ingredients

[VISIT PRODUCT SITE](#)

**SAVE 75¢**

Buy ONE Earth's Best® Organic Whole Grain Bars



[VISIT PRODUCT SITE](#)

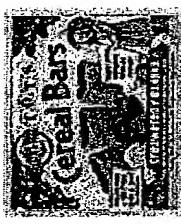
**SAVE 75¢**

Buy ONE Earth's Best® Organic Cereal Bars

supermarket.



Made with no genetically modified ingredients



Made with no genetically modified ingredients

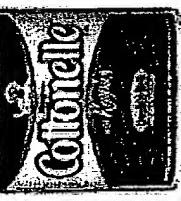
ADD TO LIST

**WISHLIST PRODUCT**

**SAVE \$1.00**

Buy ONE Cottonelle® Toilet Paper

12 Pack or Larger



ADD TO LIST

**WISHLIST PRODUCT**

**SAVE Up To \$1.00**

Buy FOUR Earth's Best® Organic  
Jarred Baby Food SAVE 50¢  
OR .  
Buy EIGHT Earth's Best® Organic  
Jarred Baby Food SAVE \$1.00

Reply to Office Action

Appl. No. 09/682,876

Made with no genetically modified ingredients

ADD TO LIST

**WISHLIST PRODUCT**

**ADDITIONAL IN-STORE SAVINGS**

Screen 3 (Part 2)

**Savings Available Through 03 / 21 / 2004**

**Additional Osco Drugs in-store savings are redeemable Off Your Next Shopping Order, unless otherwise specified.**

ADD TO LIST

**SAVE \$1.00**

Buy ONE E.P.T.® Pregnancy Test



ADD TO LIST

**WISHLIST PRODUCT**

**SAVE \$0.50**

Buy TWO Pedialyte® Oral Electrolyte  
Maintenance Solution

ADD TO LIST

**WISHLIST PRODUCT**

**SAVE \$1.00**

Buy SIX Powerbar® Protein™ (1 ct.)

ADD TO LIST

**WISHLIST PRODUCT**

**SAVE \$1.00**

Buy SIX Powerbar® Protein™ (1 ct.)

ADD TO LIST

**SAVE \$1.00**

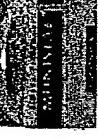
Buy TWO Nature Made® Multivitamins,  
Letters, OR Minerals Products only

ADD TO LIST

**WISHLIST PRODUCT**

**SAVE \$1.00**

Buy FOUR Dole® Fruit Bowls® (4 pack) OR  
Fruit & Gel Bowls (4 pack)

<input type="checkbox"/> ADD TO LIST	<b>SAVE \$1.00</b>	Buy TWO Boxes of O.B. <sup>®</sup> Tampons		<input type="checkbox"/> ADD TO LIST	<b>SAVE \$1.00</b>	Buy ONE Monistat <sup>®</sup> 1 Product	
<input type="checkbox"/> ADD TO LIST	<b>SAVE \$2.00</b>	Buy ONE Maximum Strength Pepcid <sup>®</sup> AC (5 count or larger)		<input type="checkbox"/> ADD TO LIST	<b>SAVE \$1.00</b>	Buy THREE Powerbar <sup>®</sup> Energy Bites™ (excluding multipacks)	
<input type="checkbox"/> ADD TO LIST	<b>SAVE \$1.00</b>	Buy FIVE Campbell's <sup>®</sup> Condensed Soups		<input type="checkbox"/> ADD TO LIST	<b>SAVE \$1.00</b>	Buy FIVE Campbell's <sup>®</sup> Condensed Soups	
Reply to Office Action Appl. No. 09/682,876	Screen 3 (Part 3)	Campbell's					

 **GET CUSTOMIZED SHOPPING LIST**

For assistance, visit our help section or e-mail us at [HelpDesk@ValuPage.com](mailto:HelpDesk@ValuPage.com)

Featured Savings are limited to one per visit. Additional In-storeSavings are unlimited. Some items may not be carried in all stores. Unlawful to alter. No cash value. ValuPage Savings are redeemable on your NEXT visit. Coupon redemption cannot result in cash back and is subject to individual retailers coupon policies. Customer must pay any sales tax. Good on all products except as prohibited by law.

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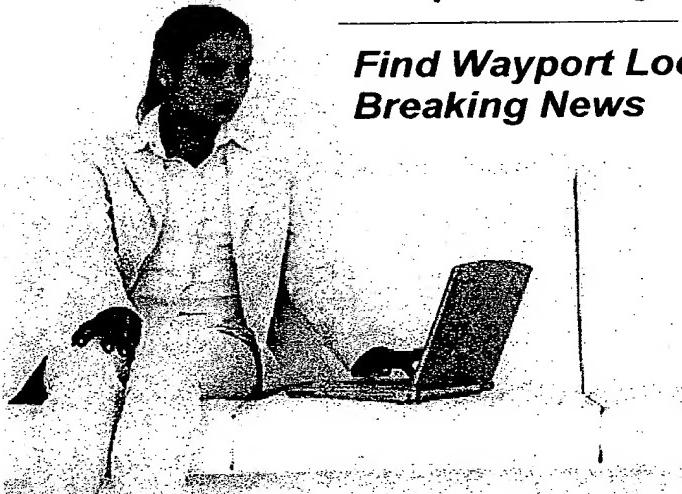
**Welcome to the future...**

The future is now: high-speed Wi-Fi in hotels, airports and retail locations ... where travelers need it. Wayport — the world's largest provider of high-speed Wi-Fi wireless and wired Internet access in airports and beyond — is ready to take you there. Discover the future for:



- **Travelers**
- **Meeting Planners**
- **Hoteliers**
- **Airport Managers**

**Find Wayport Locations  
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Information Disclosure Statement  
Appl. No. 09/682,876

Screen 1



## Products & Services

### *Fast Net For People on the Move*

#### Products And Services

Pricing

Membership

Locations

Manage Your Account

Support

Our Strategic Partners

HOME

NEWS / PRESS

ABOUT US

CONTACT US

search site:

entire site

support

**GO!**



#### FOR THE TRAVELER

Wayport's high-speed Internet access - both Wi-Fi (802.11b) wireless and wired Ethernet - in hotels, airports and McDonald's locations in select cities nationwide helps travelers stay connected and productive while away from home and the office. You can find Wayport throughout an extensive nationwide network of more than 3,000 locations including hotels, airports and McDonald's nationwide.

Get Connected! Wayport's payment options allow you to use and pay for our service however it's most convenient for you: Pay as you go, or save money with a Prepaid Connection Card or Wayport Membership.

*Questions? Check our General F.A.Q.*

#### FOR THE MEETING PLANNER

Wayport removes the fear factor from providing Internet access in meetings. Wayport Meeting Services can take your conferences, seminars, meetings and training sessions to new heights of productivity and interactivity.

#### FOR HOTELIERS

Drive occupancy and revenue by offering your guests a complete high-speed Internet solution: Wayport service in your guestrooms, public areas (lobby, lounges, restaurants, etc.) and meeting facilities.

#### FOR AIRPORTS

Help your passengers stay connected and productive with Wayport's Wi-Fi (802.11b) wireless Internet access and Laptop Lane airport business centers. Join airports such as Hartsfield Atlanta, Chicago O'Hare, DFW, LaGuardia, Sea-Tac, San Jose, Salt Lake City and Austin-Bergstrom in offering Wayport's service.

#### FOR THE CORPORATE IT MANAGER/TRAVEL PLANNER

A Wayport Corporate Membership will keep your company's employees reliably and securely connected - at speeds up to 50 times faster than standard dial-up service - while



traveling and will save your  
company money.

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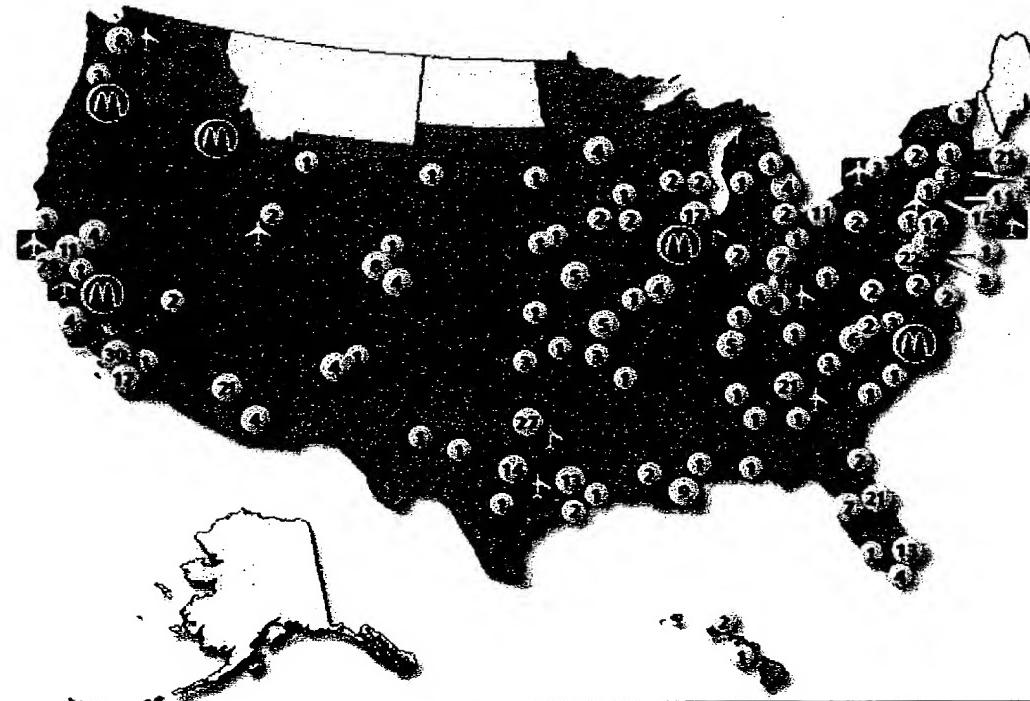
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**United States | Canada | International | Wayport Air Laptop Lane Locations**



City With Wayport Hotel(s)

Number Indicates How Many Wayport Hotels are in a City

Airport With Wayport and/or Laptop Lane

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To search for Wayport locations throughout the United States and Canada, click in the blue-shaded states in the map above, or select a location from the list below:

Alabama

Search This Location



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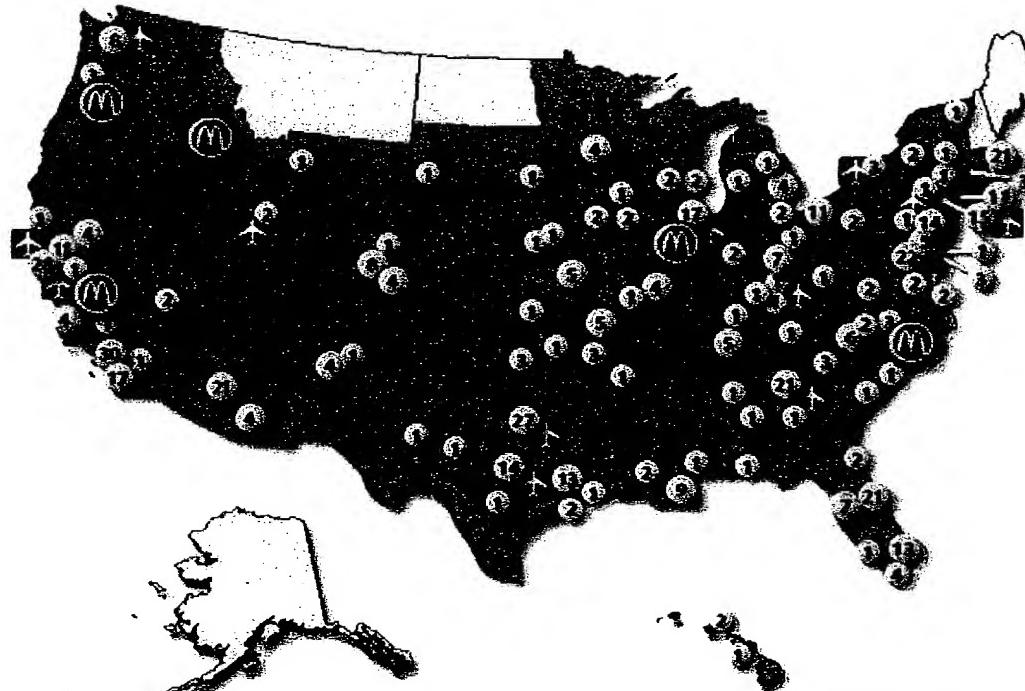
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Search by Brand

To find a property in a given location by a specific brand, please select from the lists below:

Search For:

in:

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**United States | Canada | International | Wayport Air Laptop Lane Locations**

We're sorry - there currently are no Holiday Inn sites with Wayport service in Wisconsin but we're growing fast, and welcome suggestions and requests for service! To suggest a site for Wayport service in Wisconsin (or anywhere else), please contact us via the form below.

### Information Request Form

**First Name:**

**Last Name:**

**Company:**

**Email Address:**

**Phone:**

**Please tell us your specific needs or requirements:**

**Click the "Submit" button below to send us your information.**

We appreciate your time and interest, and look forward to serving you in the future! If you have any questions, comments or other thoughts to share, feel free to call us at **888-4WAYPORT**.

**Submit**

**Clear Form**

**Choose Different Search Criteria Below, Or Return To Location Map.**

**Search by Brand**

**Search by Brand**

To find a property in a given location by a specific brand, please select from the lists below:

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in:

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	Application No.	Applicant(s)
	09/682,876	DUCHOW, MARK
	Examiner James W Myhre	Art Unit 3622

All participants (applicant, applicant's representative, PTO personnel):

(1) James W Myhre. (3) \_\_\_\_\_.

(2) Michael J. McGovern. (4) \_\_\_\_\_.

Date of Interview: 04 August 2004.

Type: a) Telephonic b) Video Conference  
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.

If Yes, brief description: Printers of web sites.

Claim(s) discussed: 67.

Identification of prior art discussed: Stewart et al (6,259,405) and Scroggie et al (6,185,541).

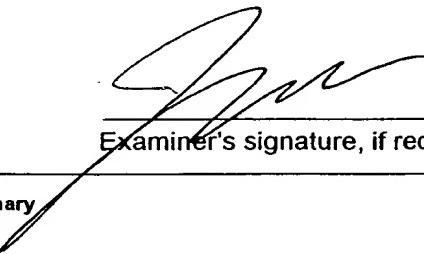
Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant Representative discussed the proposed amendment and how the claims differed from the cited references. Specifically discussed was the order in which the customer information was received and how the system selected the retailer and the incentive. The Examiner didn't believe that this items would render the claims non-obvious over the references, but would reconsider them when the official amendment is received.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
Examiner's signature, if required

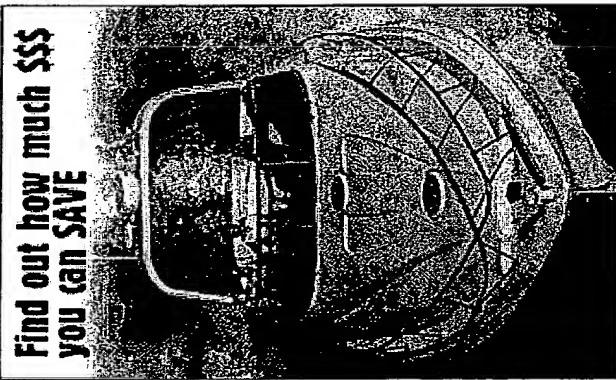
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- Cabrio 240 I/O
- Cabrio 260 I/O
- Cabrio 274
- Cabrio 290 Midcabin I/O
- Cabrio 310
- Cabrio 330
- Cabrio 370

#### Deckboats

- Escape 204 I/O
- Escape 204 O/B
- Escape 214 I/O
- Escape 234 I/O

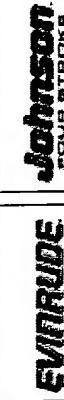
#### Fish-n-ski

- Escape 204 I/O
- Escape 204 O/B
- SEI 180 Ski 'n Fish O/B
- SEI 190 Ski 'n Fish I/O

#### Runabouts

- LSI 212 I/O
- LSI 190 I/O
- LSI 210 I/O
- LSI 230 I/O
- LSI 270 I/O
- SEI 180 I/O

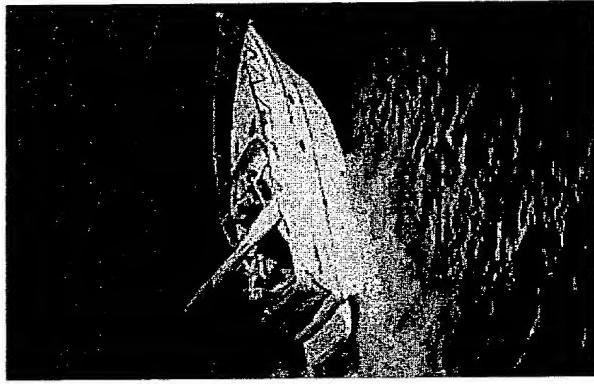
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  - Cabrio 274
  - Cabrio 290 MidcabIn
  - Cabrio 310
  - Cabrio 330
  - Cabrio 370
  - Escape 204 I/O
  - Escape 214 I/O
  - Escape 234 I/O
  - Escape 204 O/B
  - Escape 204 I/O
  - Escape 204 O/B
  - SEI 180 Ski 'n Fish O/B
  - SEI 190 Ski 'n Fish I/O

## Runabouts

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 O LXI 210 I/O      O LXI 230 I/O  
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Larson® Boats

Cabrio 220

First Name \*

Last Name \*

Country

Address

Address 2

City

State

ZIP or Postal Code \*

Please Input the zip/postal code for your home or vacation home

Phone

E-mail \*

Verify E-mail \*

\* Required Fields



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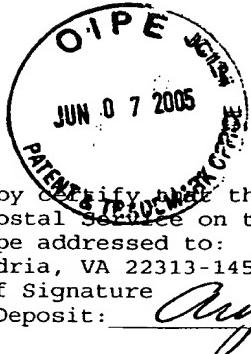
<http://www.hometownboatshow.com/registration.cfm?>



Select Brand → Select Boat → Registration → Confirmation

JUN 8 2005

3/30/04



I hereby certify that this correspondence is being deposited with the U.S. Postal Service on the date set forth below as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Signature and Deposit: Aug. 12, 2004 Mark R. Duchow  
Attorney of Record

**PATENT**

Docket No. 670715.90029

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Duchow  
Appl. No: 09/682,876  
Filed: October 26, 2001  
For: SYSTEM AND METHOD FOR PROVIDING  
ELECTRONIC VOUCHERS  
Art Unit: 3622  
Examiner: J. Myhre

---

**Declaration of Mark R. Duchow**

**Under 37 C.F.R. 1.132**

---

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Mark R. Duchow, declare and state as follows:

1. I am the inventor of this patent application.
2. I understand that the U.S. Patent and Trademark Office has rejected my patent application because the differences between my claimed invention and the prior art are said by the Examiner to be obvious.
3. I understand my claimed invention to cover the concepts of providing at least one screen display to the prospective customer through the Internet to allow the

prospective customer to select only one product of one producer;

receiving the selection of the only one product of the one producer from the prospective customer through the Internet at the website;

only after receiving the only one product selection from the prospective customer and before displaying any amount of any purchase incentive to the prospective customer,

providing a screen display to the prospective customer which requests the prospective customer to enter personal contact information and a postal address code;

receiving the personal contact information and the postal address code corresponding to the product selection from the prospective customer through the Internet at the website;

only after the website receiving the only one product selection and the personal contact information and the postal address code from the prospective customer,

the website selecting only one reseller from a plurality of available resellers based on the product selection and based on the postal address code being within, or closest to, a pre-defined marketing territory of the reseller;

the website then generating a voucher having a time limit for redemption and having a producer's purchase incentive on the purchase of the only one selected product at the only one selected reseller; and

communicating the voucher for the only one selected product to at least one of the prospective customer and the selected reseller over the Internet.

4. My invention has been commercially successful in being licensed, in being used to sell a substantial dollar volume of products and in being copied by others, as

previously established in the record of this patent application.

5. The invention has been commercially successful for many reasons other than the sole fact of the amount of cash back incentive offered to the customer.

6. It has been successful for businesses having pre-defined primary marketing areas as outlined in paragraphs [0001]-[0012] of this patent application.

7. The invention is successful because there is marketing psychology involved with each step. The state of mind of the user on the site is considered at every phase.

8. The user is shown a listing of products available. A choice of make and model is offered. Having a choice is important to consumers because everyone has individual needs. No one likes to feel they are being "force-fed" a selection. Consumers are allowed to make their own decision on the type of product they desire, but they must choose one, and only one to continue the process.

9. Users are not asked to provide any personal contact information such as a name and mailing address or an e-mail address to access the site or to select a product. Providing personal contact information is a deterrent for many, and the system is designed to encourage use, not cause people to shy away. Personal contact information is obtained later in the process, after the user has become involved with the site.

10. Forcing the selection of make and model involves the user in the process. The user is forced to think, and make decisions about the type of product they wish to purchase. The time a consumer invests becomes equity, and makes it more likely they will complete the next task, which is entering personal contact information, such as name and address or e-mail address, and a zip code.

11. Curiosity also plays an important role. While the consumer has been involved in the site, receiving

product data, making purchase choices, they have not been told the selling price of the product selected, or the amount of the cash discount being offered. These are important facts to know, and to receive the information, personal contact information must be provided. The time invested in making decisions, and curiosity about what waits in the end, compel the consumer to enter the information.

12. Through the invention, the user is informed that he or she can receive an exclusive offer by following the instructions on the page to enter his or her personal contact information. In my experience in marketing products, I have observed that cash discounts have the greatest appeal. Consumers are excited about cash discounts, but this is not the only factor in making a sale. A consumer would not be as excited about entering personal contact information before shopping for a product and being offered a cash discount.

13. All of the information provided by the user: selected make, chosen model, personal contact information and zip code, is stored by the system. The user is unaware of this at the time he provides it, but the data is kept and revealed in summary on the voucher the user is now ready to receive.

14. The voucher is sent via email. Once received, the consumer is finally shown the value of the purchase inventive. This is shown next to the product selections the user made. The purchase inventive has a definite value, but the purchase price of the product the consumer has chosen is still unknown. The product selected has yet to be seen, other than in a photograph. Both the product viewing, and the revelation of the selling price, are available only at the reseller's showroom. The address of the reseller is provided on the voucher, and an expiration date for redeeming the voucher is shown. The consumer has

all the information necessary to take the last step, and because of the time invested (the equity) and the important unknowns, a percentage of the consumers will take their vouchers to the showroom.

15. When the consumer visits the reseller, the consumer has already selected the product the consumer wishes to purchase, and has an incentive in hand which serves as a reason to buy now, rather than at a later time.

16. I have reviewed many of the prior art references cited by the Examiner in this application and as far as I can see, none of the prior art, to my knowledge, discloses or suggests taking these steps for the reasons I have stated above.

17. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: AUGUST 11, 2004

  
Mark R. Duchow

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